

REMARKS

The Amendments

Claim 1 is amended to clarify that the gastric ring is "such that the inside of the loop avoids a sharp edge which would injure the gastric wall." Support therefore is inherent in the nature of a gastric ring and is also literally found in the disclosure at page 15, line 36, to page 16, line 2. This is not a narrowing amendment since (as the specification makes clear) this is a necessary and inherent feature of a gastric ring, as originally claimed. The claims are also amended to address informalities, including addressing the 35 U.S.C. §112 rejection. The new claims are supported by the original claims and are provided in connection with the amendments to address informalities. These amendments also do not narrow the scope of the claims.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejection under 35 U.S.C. §112, second paragraph

The rejection of claims 1-13 under 35 U.S.C. §112, second paragraph, is believed to be rendered moot by the above amendments.

The Rejections under 35 U.S.C. §102 and §103

The rejection of claims 1 and 7 under 35 U.S.C. §102, as being anticipated by Robinson (U.S. Patent No. 4,955,913), and the rejection of claims 2-3 under 35 U.S.C. §103, as being obvious over Robinson in view of Vert (U.S. Patent No. 5,567,431) are respectfully traversed.

Robinson discloses an absorbable surgical tie. The tie is designed for feline and canine hysterectomies; see, e.g., col. 1, lines 22-26. The Robinson device has an elongated strap with a locking means for connecting the ends thereof and is provided such that, when emplaced, serves to ligate – cut out – the tissue it surrounds; see, e.g., col. 1, lines 27-37. It can be seen from the Figures and their description that the inward facing surface of the strap provides teeth designed for cutting through the tissue they contact; see, e.g., col. 5, lines 1-13.

As further clarified in claim 1 above, a gastric ring cannot have teeth for cutting tissue. To the contrary, a gastric ring must avoid sharp edges which would injure the gastric wall that it contacts. Robinson therefore cannot anticipate the instant claims drawn to a gastric ring. Robinson is directed to a device designed for the completely different purpose of ligating – i.e., cutting and removing – tissue and the teeth provided on Robinson's device clearly distinguish the instant claims from Robinson's device. For this reason, at least, there is no anticipation.

Further, Robinson fails to disclose a "closure means suitable for folding said elongate element into a loop." Robinson discloses a locking means for locking a loop once it is formed but no means are provided for actually folding the strap into a loop. In Robinson's device, there is no disclosure of any means for folding the strap. It is apparent that the strap in Robinson's device must be manually folded by the surgeon to engage the locking means; see, e.g., col. 3, lines 61-65. For this further reason, there is no anticipation of the claimed invention by Robinson.

Accordingly, the rejection under 35 U.S.C. §102, at least, should be withdrawn.

Robinson alone or in combination with Vert also fails to render the claimed invention obvious to one of ordinary skill in the art. As discussed above, the objective of the Robinson device is to ligate tissue and it would be contrary to this object to modify Robinson to remove the cutting teeth from its device. Such would completely destroy the objective of the device. Further, Robinson provides no suggestion of a "closure means suitable for folding said elongate element into a loop." Robinson only contemplates manual manipulation to fold the strap into a loop. Thus, Robinson provides no teachings to suggest modification of its device to meet these elements of the claimed invention.

Vert was cited for its teachings regarding particular bioresorbable polymers. Vert provides no teachings which would suggest modification of the Robinson device in any manner which would result in the elements of the claimed invention which – as pointed out above – are lacking in Robinson. Thus, the combination of Robinson and Vert also fails to suggest modification of the prior art device to meet the elements of the claimed invention.

Accordingly, the combined teachings of Robinson and Vert fail to render the claimed invention obvious to one of ordinary skill in the art and the rejection under 35 U.S.C. §103

should also be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

Respectfully submitted,

/John A. Sopp/
John A. Sopp, Reg. No. 33,103
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: LOM-0040

Date: May 3, 2007

JAS/cak